

AUGUST 2021 NEWSLETTER

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CAN AN EMPLOYER ASK AN EMPLOYEE IF HE/SHE RECEIVED AND/OR REQUIRE THE COVID-19 VACCINATION

NAME CHANGE ANNOUNCEMENT

It is with great pleasure we announce an exciting new chapter for our firm. Effective September 1, 2021 Pozzuolo Rodden will change its name to Pozzuolo, Rodden, Pozzuolo, Counselors at Law. The firm's name change recognizes the hard work, leadership and community service of Jeffrey S. Pozzuolo during the last decade. Jeffrey has been a trusted and skilled practitioner in our firm's core business, transactional, tax, and estate planning areas. This includes hundreds of multi-million dollar business and real estate sales and acquisitions including securing, negotiating and finalizing financing with investment, commercial and institutional lenders through closing and the related estate planning for high net worth clients arising from the transaction in addition to teaching numerous courses in all of these advanced fields through the years. His practical and multifaceted approach, as well as creatively always searching for a win-win, allows him to quickly and effectively cut through the red tape of difficult issues that arise and the games counterparties can play to simplify the process and "close the deal" with business transactions, and to find creative and practical solutions to integrate the business transaction with the client's estate planning to best meet their estate tax and dispositive

needs.

Pozzuolo Rodden feels incredibly lucky to provide these advance, sophisticated boutique services and day to day practical, hands-on experience from an accomplished acadanium. Jeffrey has JD/MBA and LLM in Taxation degrees from Temple University Beasley School of Law and Fox School of Business. In addition, Jeffrey graduated magna cum laude from The Wharton School of the University of Pennsylvania with a BS in Economic (Finance and Accounting) and a BA in mathematics from the College of Arts and Sciences. This breadth of education gives him a perspective most other attorneys do not have to find creative solutions to offer our clients the sophisticated experience one would expect of a specialist with the “hands on” personalized attention and execution. We feel incredibly lucky to have him on our team and to you – our clients, colleagues and friends – to work for and to work with.

CAN AN EMPLOYER ASK AN EMPLOYEE IF HE/SHE RECEIVED AND/OR REQUIRE THE COVID-19 VACCINATION

In December 2020, we published a [newsletter](#) discussing the fact that employers can require their employees to receive the COVID-19 vaccine in order to return to work. This office receives at least 5 calls a day on whether the employer can ask an employee if he/she has received the COVID-19 vaccination and if not, can the employer require the vaccination as a condition to return to work. Since our December 2020 newsletter, there has been further guidance provided by the U.S. Equal Employment Opportunity Commission (“EEOC”).

First, an employer may ask an employee about his or her vaccination status provided the employer is careful not to violate the Americans with Disabilities Act (“ADA”). The best course of action is to ask employees for proof of COVID-19 vaccination as this is unlikely to obligate or require the employee to provide the employer with ADA protected information. However, employers must understand that the EEOC permits employees to decline to provide this information to the employer. While the EEOC permits employers to ask about vaccination status, they advise against asking follow up questions - specifically they direct employers not to ask questions regarding why an employee did not receive the vaccine. Employers should also check state and local laws and regulations to ensure their inquiry into employee COVID-19 vaccination status does not violate any state and local laws and/or regulations.

Secondly, the EEOC has provided updated [guidance](#) for employers relating to COVID-19 and the ADA and the Rehabilitation Act (which include the requirement for reasonable accommodation and non-discrimination based on disability, and rules about employer medical examinations and inquiries), Title VII of the Civil Rights Act (which prohibits discrimination based on race, color, national origin, religion, and sex, including pregnancy), the Age Discrimination in Employment Act (which prohibits discrimination based on age, 40 or older), and the Genetic Information Nondiscrimination Act.

The EEOC expressly stated that under federal anti-discrimination laws, employers are permitted to require all employees who physically enter the workplace to be vaccinated for

COVID-19 but if the employer encourages or requires the vaccination, they must comply with the ADA, Title VII and all other laws. This includes, but is not limited to, providing accommodations for employees that have a disability or religious objection and also reaching an agreement with a union if the employees are part of a union. As you can assume, employers may not apply a vaccine requirement to employees in a manner that treats employees different based upon disabilities, race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age, or genetic information unless there is a legitimate non-discriminatory reason. Additionally, the EEOC further emphasized that, as with any employment policy, employers may still need to respond to allegations that a vaccine requirement has a higher disparate impact on certain employees. The EEOC further states that employers should keep in mind that due to the fact that some individuals may have “greater barriers” to obtaining the COVID-19 vaccine than others, and as a result, some employees could be more likely to be negatively impacted by an employer’s vaccine mandatory requirement. However, this is less of an issue now than it was last winter and/or spring.

If an employer chooses to require proof of vaccination, employers are reminded that they are required to maintain the confidentiality of employee medical information - including documentation or other confirmation of the COVID-19 vaccination. Vaccination confirmation, like all medical information, must be kept confidential and stored separately from an employee’s personnel file.

Notwithstanding, many employers are choosing to give employees a choice: either get the COVID-19 vaccination or be willing to submit weekly negative COVID-19 test results in order to return to work. Other employers are making vaccination voluntary but offering incentives to those that are vaccinated. As an employer, whatever your policy is it is best to put whatever your vaccination policy is in writing and apply it equally to all employees.

Since the subject of vaccination is such a personal topic, employers should be prepared to face some difficult decisions, especially if some employees object to receiving the vaccination. The vaccine and the pandemic are still ever evolving and new information is provided by the government on a semi-regular basis. We will provide updates with more information and guidance as it is released and as the pandemic evolves.

Please [contact our office](#) if you would like to discuss whether a vaccine mandate would be effective in your specific business situation.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at INFO@POZZUOLO.COM.